

The Honorable Benjamin Settle  
Trial Date: April 16, 2013

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CLYDE RAY SPENCER, MATTHEW RAY  
SPENCER, and KATHRYN E. TETZ,

Plaintiffs,

vs.

FORMER DEPUTY PROSECUTING  
ATTORNEY FOR CLARK COUNTY JAMES  
M. PETERS, DETECTIVE SHARON  
KRAUSE, SERGEANT MICHAEL  
DAVIDSON, CLARK COUNTY  
PROSECUTOR'S OFFICE, CLARK  
COUNTY SHERIFF'S OFFICE, THE  
COUNTY OF CLARK, SHIRLEY SPENCER  
and JOHN DOES ONE THROUGH TEN,

Defendants.

No. C11-5424BHS

DEFENDANT SHIRLEY SPENCER'S  
MOTION TO JOIN DEFENDANT  
MICHAEL DAVIDSON'S SUMMARY  
JUDGMENT MOTION AND FOR  
DISMISSAL OF PLAINTIFFS' CLAIMS  
AGAINST DEFENDANT SPENCER  
PURSUANT THERETO

NOTED FOR: June 22, 2012

**I. RELIEF REQUESTED**

Defendant Shirley Spencer moves to join Defendant Michael Davidson's Summary Judgment Motion seeking dismissal of Plaintiffs' claims. Defendant Davidson's motion is based, in part, on the statute of limitations as to all state law claims and on collateral estoppel

DEFENDANT SHIRLEY SPENCER'S MOTION  
TO JOIN DEFENDANT MICHAEL  
DAVIDSON'S SUMMARY JUDGMENT  
MOTION – [No. C11-5424BHS] -1  
gw/GW1218.466/963850

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precluding re-litigation of issues essential to Plaintiff Clyde Ray Spencer's constitutional claims. These arguments apply with equal force to the claims asserted against Defendant Spencer. The statute of limitations bars all state law claims against Defendant Spencer and Plaintiff Spencer is collaterally estopped from re-litigating issues essential to federal conspiracy claims. As a result, Defendant Spencer respectfully requests that the Court dismiss Plaintiffs' claims for intentional infliction of emotional distress and state and federal law conspiracy.

## II. MATERIAL FACTS

Defendant Spencer adopts the Material Facts presented in Defendant Davidson's Summary Judgment Motion, pages 2-13. The particular facts pertinent to this motion are summarized as follows:

On May 16, 1985, Plaintiff Clyde Ray Spencer entered an *Alford* plea, in which he pled guilty to seven counts of first degree statutory rape and four counts of complicity to first degree statutory rape. Dkt. 63, *Freimund Decl.* at Ex. 7 (Statement of Defendant on Plea of Guilty). At his plea hearing, Plaintiff Spencer stated that he had no basis upon which to refute the victims' disclosures of his sexual abuse. *Id.* at Ex. 8 (certified transcript of the May 3, 1985, filing of the Second Amended Information, the May 16, 1985, plea hearing, and the May 23, 1985, Sentencing Hearing), pp. 20-35. On May 23, 1985, the Court entered two Judgments and Sentences, sentencing Plaintiff Spencer to life imprisonment. *Id.* at Ex 9 (Judgment and Sentencing Orders).

In May, 1986, Plaintiff Spencer moved to withdraw his guilty plea and vacate his conviction. *Id.* at Ex. 10, pp. 1-2. Among his constitutional claims, he argued that the prosecutor had failed to disclose exculpatory evidence—in particular, the King County

1 prosecutor's opinion that a conviction was unlikely based solely on Ms. Tetz's initial  
 2 disclosure and medical reports concluding that there was no physical evidence that Matthew  
 3 Hansen and Mrs. Tetz were sexually abused. *Id.* at Ex. 10, pp. 2-6. He also argued that he had  
 4 been coerced by Defendant Davidson into entering a guilty plea during jail visits motivated by  
 5 Davidson's alleged affair with Plaintiff Spencer's then-wife, Defendant Shirley Spencer. *Id.*  
 6 The trial court denied his motion and the Court of Appeals affirmed in 1988, specifically  
 7 concluding that Plaintiff Spencer's admissions in open court that his guilty plea was not  
 8 coerced outweighed his assertion that Defendant Davidson had coerced him. *Id.* Further, the  
 9 Court concluded that the prosecutor did not breach a duty to disclose exculpatory evidence  
 10 and, even if he did, Mr. Spencer was unable to prove that the evidence at issue would have  
 11 caused him to go to trial rather than enter a guilty plea. *Id.*

12 In 1994, after exhausting his state court remedies, Plaintiff Spencer sought habeas  
 13 corpus relief in the United States District Court for the Western District of Washington. Dkt.  
 14 62, *Freimund Decl.* at Ex. 13 (Magistrate's Report and Recommendations and Judge's Order  
 15 adopting the same). Again, he raised the constitutional claims that Defendant Davidson had  
 16 unlawfully coerced his guilty plea during jail visits motivated by his alleged affair with  
 17 Defendant Spencer, and that the prosecution had failed to disclose exculpatory evidence. *Id.* at  
 18 Ex 13, pp. 2-22. The federal court granted the State's motion for summary judgment dismissal  
 19 of the habeas petition, concluding, among other things, that Defendant Davidson did not  
 20 unconstitutionally coerce Plaintiff Spencer even if the jail visits occurred as alleged by Mr.  
 21 Spencer, and that there was no reasonable probability the two withheld medical reports would  
 22 have caused Mr. Spencer to proceed to trial rather than plead guilty. *Id.*

1 The Ninth Circuit Court of Appeals affirmed the District Court's conclusion that  
 2 Defendant Davidson had not unlawfully coerced Plaintiff Spencer into pleading guilty. Dkt.  
 3 62, *Freimund Decl.* at Ex. 14 (Ninth Circuit Memorandum), pp. 4-5. With regard to the issue  
 4 of exculpatory evidence, however, it concluded that Plaintiff Spencer was entitled to an  
 5 evidentiary hearing to determine if there was a reasonable probability the two withheld  
 6 medical reports would have caused him to proceed to trial rather than plead guilty. *Id.*

7 That hearing was conducted by Judge Bryan of the United States District Court for the  
 8 Western District of Washington over a three-day period in September, 1996. Dkt. 62,  
 9 *Freimund Decl.* at Ex. 15 (Judge Bryan's September 25, 1996 Order), pp. 2-4. After hearing  
 10 testimony from several witnesses, Judge Bryan concluded that neither the Clark County  
 11 Prosecuting Attorney nor the Clark County Sheriff's Office violated a duty to disclose the  
 12 medical reports at issue. *Id.* Judge Bryan further concluded that "it is probable that if  
 13 [Plaintiff] Spencer had Kathryn Spencer's [Tetz's] medical report, it would not have been  
 14 sufficiently exculpatory or persuasive to cause him to refuse to plead guilty and to go to trial:  
 15 Kathryn Spencer's medical report was not likely to persuade the trier of fact that [Plaintiff]  
 16 Spencer was not guilty of the crimes charged." *Id.* Accordingly, Mr. Spencer's habeas corpus  
 17 petition was denied. *Id.* Judge Bryan's ruling was affirmed in 1997 upon Plaintiff Spencer's  
 18 appeal to the Ninth Circuit. Dkt. 62, *Freimund Decl.* at Ex. 16 (Ninth Circuit's 1997  
 19 Memorandum).

### 20 III. ISSUE STATEMENT(S)

21 Whether Plaintiff Clyde Ray Spencer's state law claims against Defendant Shirley  
 22 Spencer are time barred by the statute of limitations when: (1) Mr. Spencer was  
 23 sentenced to life in prison in 1985, and (2) Mr. Spencer's claims against  
 Defendant Shirley Spencer were filed in 2011.

Whether Plaintiff Clyde Ray Spencer is collaterally estopped from re-litigating the issues of probable cause for his arrest, alleged coercion from Defendant Davidson and the alleged withholding of exculpatory evidence, when both state and federal courts have made final determinations foreclosing each of these issues.

#### IV. EVIDENCE RELIED UPON

This motion relies upon the Court's records and all pleadings filed in this matter, including Defendant Spencer's Motion for Summary Judgment and Supporting Declarations. (Dkt. 52-54). This motion specifically adopts, and relies upon Defendant Michael Davidson's Summary Judgment Motion (Dkt. 62) and the corresponding Declaration of Jeffrey Freimund (Dkt. 63), including all exhibits thereto.

#### V. LAW AND ARGUMENT

##### *1. Plaintiff Spencer's State Law Claims Against Defendant Shirley Spencer are Barred by the Statute of Limitations*

Defendant Spencer adopts the argument set forth on page 14 of Defendant Davidson's Summary Judgment Motion. Plaintiff Clyde Ray Spencer has alleged two state law claims against Defendant Shirley Spencer—intentional infliction of emotional distress and conspiracy under the laws of Washington. The statute of limitations for each of these claims is three years. RCW 4.16.080(2). In Washington, personal injury actions ordinarily accrue at the time the challenged act or omission occurs. *Doggett v. Perez*, 348 F.Supp.2d 1169, 1175 (E.D. Wash. 2004). Causes of action arising out of an arrest or conviction must be commenced within two or three years of the conviction, even if it has yet to be invalidated. *Id.* at 1176-77; *Gausvik v. Abbey*, 126 Wn. App. 868, 879-82, 107 P.3d 98.

The three-year statute of limitations for Plaintiff Spencer's state law claims of conspiracy and intentional infliction of emotional distress against Defendant Spencer accrued

1 when he was sentenced to life in prison in May of 1985. It ran three years later, in May 1988.  
 2 Accordingly, Plaintiff's state law claims against Defendant Spencer have been time-barred by  
 3 the statute of limitations for over a decade and should be dismissed with prejudice.

4 ***2. Mr. Spencer is Collaterally Estopped from Re-Litigating His Allegations that***  
 5 ***Defendants Violated His Constitutional Rights by Arresting Him Without***  
 6 ***Probable Cause and Withholding Exculpatory Evidence***

7 Defendant Spencer adopts the argument set forth on pages 16-19 of Defendant  
 8 Davidson's Summary Judgment Motion. Dkt. 62, p. 16-19. Plaintiff Clyde Ray Spencer  
 9 claims that defendants violated his Fourth, Fifth and Fourteenth Amendment constitutional  
 10 rights in the following ways: (1) arrest and prosecution without probable cause; (2)  
 11 coercion/conspiracy based upon Defendant Davidson's alleged romantic relationship with  
 12 Plaintiff Spencer's second wife; and (3) failure to disclose exculpatory evidence, including the  
 13 medical reports of two child victims. Dkt. 1, pp. 45-58. However, both state and federal courts  
 14 have entered final judgments regarding these allegations. Specifically, both state and federal  
 15 courts have determined that: (1) there was probable cause for Mr. Spencer's arrest; (2)  
 16 Defendant Davidson did not unconstitutionally coerce Plaintiff Spencer to plead guilty; and  
 17 (3) the children's' medical reports and the King County prosecutor's opinion were not  
 18 unconstitutionally withheld from Mr. Spencer. As such, Plaintiff Clyde Ray Spencer is  
 19 collaterally estopped from re-litigating these issues in furtherance of his conspiracy claims  
 20 against Defendant Spencer and his claims should be dismissed with prejudice.

21 **VI. CONCLUSION**

22 Based upon the foregoing, the arguments presented in Defendant Davidson's motion  
 23 for summary judgment apply with equal force to the claims asserted by Plaintiffs against  
 Defendant Spencer. As such, Defendant Spencer requests that the Court grant its motion to

1 join Defendant Davidson's Motion and dismiss all claims. Plaintiff's state law claims of  
2 intentional infliction of emotional distress and conspiracy should be dismissed with prejudice  
3 as they are barred by the statute of limitations. Plaintiffs' federal conspiracy claim should also  
4 be dismissed with prejudice for the reasons set forth in Defendant Shirley Spencer's Motion  
5 for Summary Judgment, (Dkt. 52) and because Plaintiff Spencer is collaterally estopped from  
6 re-litigating the allegations central to his conspiracy claims. A proposed order is attached  
7 hereto.

8  
9 DATED this 24<sup>th</sup> day of May, 2012.

10 By: s/ Gary A. Western

11 By: s/ Gabriella Wagner

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21 of Attorneys for Defendant Shirley Spencer



**CERTIFICATE OF SERVICE**

The undersigned certifies that under penalty of perjury under the laws of the State of Washington that on the below date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

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SIGNED this 25<sup>th</sup> day of May, 2012, at Seattle, Washington.

  
Betty Dobbins